



W.P.(MD)No.928 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2024

CORAM

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.(MD)No.928 of 2023
and W.M.P(MD)No.870 of 2023

A;Muthulakshmi

... Petitioner

Vs.

1.The District Collector,
Office of the District Collector,
Madurai District.

2.The Tahsildar,
Madurai South Taluk,
Madurai District.

3.The Head Surveyor,
Madurai South Taluk,
Madurai District.

4.Mani Selvam

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents 1 to 3 to survey and fix boundaries and make appropriate sub division of the property of the petitioner and the fourth respondent based on their respective sale deeds in Survey No.382/3 Ayan Pappakudi Village, Madurai District as per the Tamil Nadu Survey and Boundaries Act, 1923 and consequently to make necessary mutations in the revenue records pertaining to the property of the petitioner within a time frame as may be fixed by this Court.



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For Petitioner : Mrs.P.Jessi Jeeva Priya
For R1 to R3 : Mr.A.Kannan
Additional Government Pleader
For R4 : Mr.J.Alaguram Jothi

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to survey and fix boundaries and make appropriate subdivision of the property of the petitioner and the fourth respondent based on their respective sale deeds in Survey No.382/3 Ayan Pappakudi Village, Madurai District as per the Tamil Nadu Survey and Boundaries Act, 1923 and consequently to make necessary mutations in the revenue records pertaining to the property of the petitioner within a time frame as may be fixed by this Court.

2. According to the petitioner, the property in S.No.382/3 in Ayan Pappakudi Village in Madurai District, to an extent of 11 cents, in northern portion and 1 acre in western portion out of 2 acres and 2 cents originally belonged to one R.Nagarajan s/o Kuppa N.Ramadoss. The said Nagarajan executed a registered general power of attorney in favour of one Ayyanar, the husband of the petitioner on 13.10.2020. Thereafter, the power of attorney executed a sale deed on 24.08.2021, in favour of his minor sons namely Arul Sri



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and Tamil Selvan under the guardianship of the petitioner. The petitioner and her children were in possession and enjoyment of the property. While so, on 05.01.2023, the fourth respondent trespassed into the property and tried to put up a construction. On the complaint of the petitioner's husband, both parties were directed to survey their respective properties and settle the disputes.

3. The petitioner further states that total extent in S.No.382/3 is 2 acres and 2 cents, out of which, eastern side 1 acre and 2 cents in Re.S.No.382/9A1A was purchased by one Vellammal and the said portion was finally purchased by the fourth respondent vide a registered sale deed dated 11.10.2019. The petitioner entered into a power of attorney with one R.Nagarajan for 11 cents on the western side 1 acre in Re.S.No.382/9A1A1. On verification of the revenue records, the petitioner came to understand that on the application of the fourth respondent, subdivision was made and Survey No.382/15 was subdivided and patta was issued in the name of the fourth respondent. At the time of surveying the property of the fourth respondent, no notice was served on the petitioner. In that subdivision, the petitioner's western side property was mistakenly included. The FMB sketch for Survey No.382/15 would clearly show that subdivision was wrongly made in Survey No.382/9A1A1 instead of S.No.382/9A1A. According to the petitioner, subdivision for S.No.382/15 ought to have been made in



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Survey No.382/9A1A not in Survey No.382/9A1A1. To rectify the aforesaid mistake, the petitioner filed the application along with necessary fee on 07.01.2023, with relevant documents for subdivision and for issuance of patta for her land. Since no action was taken on her application, the petitioner filed the above Writ Petition for the aforesaid relief.

4. The fourth respondent filed a detailed counter denying the averments in the Writ Petition. According to the fourth respondent, he constructed a dwelling house in his own plot purchased by him in Plot No.38 in Survey No. 382/2(P), which was later shown as Survey No.382/9A1A. It was only after submission of his application that survey was conducted and his land was subdivided and numbered as S.No.382/15. The remaining lands were renumbered as S.No.382/9A1A1 and patta was issued in the name of his predecessor in title in patta No.8996. The fourth respondent therefore stated that there was no merit in the Writ Petition and the same deserved to be dismissed.

5. The learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that earlier vide an interim order in W.M.P(MD)No.870 of 2023 dated 14.06.2023, this Court directed the



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Tahsildar, Madurai, to examine the documents of sale of the petitioner and the fourth respondent and on the basis of the boundaries given in the sale deeds to find out if either of the parties were in occupation of excess lands and to file a report on the same.

6. The learned Additional Government Pleader further submitted the Tahsildar, Madurai, in compliance of the said order of this Court, filed the report dated 14.10.2024. The learned Additional Government Pleader also submitted a copy of the report dated 14.10.2024 of the Tahsildar, Madurai.

7. I have given my anxious consideration to the submissions made on either side and perused the materials available on record.

8. This Court vide interim order dated 14.06.2023 clearly directed the Tahsildar to file a report after examining the sale deed of the petitioner and the fourth respondent and to find out whether the parties were in occupation of the land as per the schedule of property attached to the sale deeds. The Tahsildar in all fairness ought to have given notice to the petitioner as well as the fourth respondent and ought to have surveyed both their lands before filing the report. From the report of the Tahsildar it is evident that no notice was issued to the



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petitioner. It is therefore clear that the Tahsildar has not followed the procedure contemplated under the Act while conducting the survey. Therefore, in the absence of notice to the petitioner, the report of the Tahsildar cannot be accepted.

9. The learned counsel for the fourth respondent prays for appointment of Advocate Commissioner and he further undertakes to bear the fees of the Advocate Commissioner. There is no objection to the fourth respondent's request by the petitioner. Hence, this Court is inclined to appoint an Advocate Commissioner. Mr.R.Rajarishi (2073/2023), learned counsel (Chamber 108, Cell No.88257 81173) is appointed as an Advocate Commissioner. The fourth respondent shall pay Rs.10,000/- as fees to the Advocate Commissioner.

10. In view of the above discussions, the following directions are issued:

- i)The Tahsildar, Madurai South Taluk, Madurai, District/R2 is directed to issue notice of fresh joint survey to the petitioner as well as to the fourth respondent;
- ii) Thereafter, the Tahsildar shall conduct a survey of the petitioner's land and the fourth respondent's land on 30.11.2024 at 11.00 a.m in the presence of the Advocate Commissioner;



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iii) The learned counsel for the petitioner as well as the learned counsel for the fourth respondent shall ensure the presence of their clients and their presence on the date of survey i.e on 30.11.2024 at 11.00 a.m along with relevant documents;

iv) It is made very clear that if any of the counsels or the parties are not present on that day, the Tahsildar can go ahead with survey in the presence of the Advocate Commissioner and complete the same on that day itself without fail.

v) The Tahsildar shall issue survey certificate along with sketch within a period of four weeks from the date of survey i.e 30.11.2024.

11. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

18.11.2024

NCC:yes/no

Index:yes/no

Internet:yes/no

CM

Note: Registry is directed to upload this order copy in the official web-site on 21.11.2024.



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To:

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2.The Tahsildar,
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Madurai District.

3.The Head Surveyor,
Madurai South Taluk,
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N.MALA, J.

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